

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN WAITE, an individual; KASIM SULTON, an individual; SUSAN STRAW HARRIS p/k/a SYD STRAW, an individual; LEONARD GRAVES PHILLIPS, an individual; STAN SOBOL a/k/a STAN LEE, an individual; STEVE WYNN, an individual; DENNIS MEHAFFEY p/k/a DENNIS DUCK, an individual; and DAVID PELLISH p/k/a DAVE PROVOST, an individual, on behalf of themselves and all others similarly situated, : No. 1:19-cv-01091(LAK)
Plaintiffs, :
v. :
UMG RECORDINGS, INC.; CAPITOL RECORDS, LLC; and DOES 1 through 10, :
Defendants. :
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STIPULATION AND [PROPOSED] ORDER TO STAY LITIGATION

WHEREAS, Plaintiffs John Waite (“Waite”) and Earle R. Ely, Jr. p/k/a Joe Ely (“Ely”) commenced this putative class action against Defendant UMG Recordings, Inc. (“UMG”) on or about February 5, 2019;

WHEREAS, Plaintiffs Waite, Ely, Kasim Sulton (“Sulton”), Susan Straw Harris p/k/a Syd Straw (“Straw”), Leonard Graves Phillips (“Phillips”), Stan Sobol a/k/a Stan Lee (“Sobol”), and Israel Caballero (collectively, the “FAC Plaintiffs”) filed a First Amended Complaint (“FAC”) on June 5, 2019;

WHEREAS, on June 26, 2019, UMG filed a motion to dismiss the FAC (ECF No. 49);

WHEREAS, by Memorandum Opinion dated March 31, 2020 (ECF No. 68), the Court granted in part and denied in part UMG’s motion to dismiss, which included, *inter alia*, dismissing the FAC Plaintiffs’ claim for declaratory relief.

WHEREAS, on May 8, 2020, the FAC Plaintiffs filed a motion for leave to file a Second Amended Complaint (ECF No. 73) (the “SAC Motion”);

WHEREAS, by Memorandum Opinion dated August 10, 2020 (ECF No. 89) (the “Memorandum Opinion”), the Court granted in part and denied in part the SAC Motion, permitting the FAC Plaintiffs to re-plead certain of their previously dismissed claims, including their claim for declaratory relief;

WHEREAS, on August 31, 2020, Ely, Sulton, Straw, Phillips, Sobol, Steve Wynn, Dennis Mehaffey p/k/a Dennis Duck, and David Pellish p/k/a Dave Provost (collectively, the “SAC Plaintiffs”) filed a Second Amended Complaint (“SAC”) against UMG and Capitol Records, LLC (collectively, “Defendants,” and together with the SAC Plaintiffs, the “Parties”), and further corrected the SAC’s caption on September 2, 2020 with the filing of a corrected SAC (ECF No. 95);

WHEREAS, in addition to alleging a putative class asserting a claim of copyright infringement (“Putative Class A”), the SAC alleges a second putative class asserting a claim for declaratory relief (“Putative Class B”) and adding a substantial number of additional putative class members to the action, thereby significantly expanding the scope of discovery in this action;

WHEREAS, on September 30, 2020, Defendants UMG and Capitol answered the SAC and filed certain counterclaims against Straw and Ely, respectively (the “Counterclaims”);

WHEREAS, on October 2, 2020, the Parties submitted a Stipulation and [Proposed] Order respecting the schedule for this action, which the Court endorsed with one modification and entered on November 9, 2020;

WHEREAS, on October 18, 2020, pursuant to a Stipulation filed by the Parties, the Court dismissed Ely's claims in this action and the Counterclaims as to Ely pursuant to an individual settlement;

WHEREAS, on November 25, 2020, Straw filed a motion to sever the Counterclaims as to her, which motion is fully-briefed;

WHEREAS, on December 4, 2020, Straw answered the Counterclaims;

WHEREAS, the Parties intend to engage in settlement discussions over the course of the next several weeks, including the exchange of confidential settlement proposals, in a good-faith effort to explore potential resolution of this litigation in its entirety;

WHEREAS, the Parties have retained Hon. Dickran Tevrizian (Ret., C.D. Cal.) to serve as a mediator in this action, and have scheduled a confidential mediation with Judge Tevrizian for March 30, 2021, which (after allowing time for the Parties to formulate and exchange proposals and undertake preliminary discussions) is the earliest date on which Judge Tevrizian is available for mediation;

WHEREAS, the Parties believe that it is their best interests, and the most efficient way in which to proceed, to enter into a temporary stay of the litigation pending the completion of such dispute-resolution efforts, in order to conserve the Parties' resources and allow the Parties to focus their attentions and efforts on resolution of the litigation; and

WHEREAS, the Parties, through their respective counsel, have met and conferred and, subject to the Court's approval, agree and respectfully request that all deadlines presently

outstanding in this action, including deadlines set by this Court's orders, or under the Federal Rules of Civil Procedure or the Local Rules, should be stayed, and that the litigation should be stayed and deferred until at least April 9, 2021, while the Parties explore resolution of the case.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for Plaintiffs and Defendants, as follows:

1. The litigation, and any court deadlines set by this Court or the Federal Rules of Civil Procedure shall be stayed until April 9, 2021, at which point, if the Parties have not reached a settlement in principle, the Parties will work together to submit a stipulated case schedule for the Court's consideration.

2. The Parties shall report to the Court on or before the expiration of the stay regarding their progress toward resolution.

3. In the event that the Parties reach an impasse or their settlement discussions irretrievably break down, the Parties shall meet and confer in good faith as to whether further discussions may be fruitful and if any Party (Plaintiffs or Defendants) determines that such discussions are likely to be no longer productive, then such Party may notify the Court after five business days of the Parties' meet and confer to request that the Court terminate the stay for good cause.

4. No Party has made any previous request for such a stay.

Dated: January 27, 2021

Respectfully submitted,

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LLC*

IT IS SO ORDERED:

Dated: _____, 2021

By: _____
U.S.D.J. Lewis A. Kaplan